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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, Jr., *et al.*,

15 Defendants.
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17

Case No. CV 17-7357 JCS

Assigned to:
The Honorable Richard G. Seeborg

Discovery Matters:
The Honorable Thomas S. Hixson

**SUPPLEMENTAL DECLARATION OF
MICHAEL ZELENY IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT
OF THE CITY OF MENLO PARK AND
POLICE CHIEF DAVE BERTINI**

18 Date: March 18, 2021
19 Time: 1:30 p.m.
Courtroom: 3, 17th Floor

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21 Action Filed: December 28, 2017
Trial Date: TBD
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1 I, Michael Zeleny, declare:

2 1. I am the Plaintiff in this action. I have personal knowledge of the facts below. I
3 could testify competently to these facts if called upon to do so. I submit this Declaration to
4 supplement the previous Declaration I submitted in support of my Motion for Partial Summary
5 Judgment against the City of Menlo Park (the “City”) and Chief Dave Bertini (“Bertini”) [Dkt.
6 No. 162-2] (the “Prior Declaration”).

7 2. As described in my Prior Declaration, I intend to put on multimedia and video
8 production protest events near the headquarters of New Enterprise Associates (“NEA”) in Menlo
9 Park. These protest events involve staging a conspicuous multimedia presentation of videos
10 (animations) and images relevant to my message—*i.e.*, NEA’s corporate sponsorship, to the tune
11 of hundreds of millions of dollars, of child rapist, Min Zhu. I also intend to display placards and
12 signs, to pass out flyers, and to speak with passersby about this topic. As per my practice in the
13 past, my intention is to film their reactions, including their answers to how they feel about NEA’s
14 support of a child rapist, for an ongoing documentary that I have been working on since 2009.
15 The protest events will also be livestreamed online. I also intend to lawfully carry firearms
16 pursuant to Penal Code §§ 26375 and 26405(r) in compliance with all other applicable laws and
17 best safety practices. I consider doing so an essential part of my protest events and activities for
18 reasons described in my Prior Declaration.

19 3. Until 2012, I staged protests outside of NEA’s headquarters in Menlo Park more
20 than 20 times while lawfully carrying unloaded firearms, including a rifle and an assortment of
21 others. These protests often took place on the public roadside and sidewalk on Sand Hill Road in
22 full view of the roadway. I was never arrested. I never observed drivers driving erratically upon
23 seeing me. There were no traffic accidents nor any near misses that I observed. No one tried to
24 attack me physically, brandished a weapon at me, or tried to hit me with their car. I was always
25 cooperative with the police who were on site during nearly all of my protests.

26 4. In 2012, I was prosecuted for carrying a concealed weapon in connection with
27 these protests. The court acquitted me in 2014. I temporarily stopped my protests during this
28 time due to the criminal prosecution and my fear that, if I resumed, I would be charged again.

1 5. As explained in my Prior Declaration, the prosecutor indicated that I needed to
2 have a City permit in order to fall within Penal Code exemptions for film production and
3 entertainment events. I understand that the City also takes this position.

4 6. Although I wholeheartedly disagree that the City has any right to approve or
5 authorize my events and productions, after my acquittal, in order to comply with the law and
6 avoid arrest and further criminal prosecution, I applied for permits from the City of Menlo Park.

7 7. The only reason I have not put on my protest events and video productions in
8 Menlo Park has been the City's refusal to issue me the permits, and my fear that if I stage my
9 protest events and productions without them, I will be subject to arrest and prosecution. I cannot
10 risk being prosecuted again. Defending myself is an exhausting experience, mentally, physically,
11 emotionally, and financially. Given my past experience with the City, I am confident that the
12 City would again have me prosecuted if I staged my protest events without a permit.

13 8. During the permitting process, I repeatedly offered to accommodate any
14 reasonable time, place, and manner requirements that the City had, if City officials would just tell
15 me what they were. Among other things, on several occasions including at a September 2017
16 City Council Meeting, I offered to relocate my event to the roadside if necessary. I would still be
17 willing to relocate to the sidewalk or roadside, or another public area in proximity to NEA's
18 headquarters, if doing so would allow me to put on the protest events.

19 9. During the appeal of my application for a Special Event Permit, City staff
20 suggested that I might be better suited for a film permit because I intend to videorecord my
21 protest events. Taking this suggestion, after the City Council denied my special events
22 application, I applied for a film permit in September 2017.

23 10. I completed the City's application form to the best of my ability and submitted it to
24 the City. As reflected in my emails with City staff and the City Attorney's Office, the City then
25 posed a number of questions that were not included in the application or written policy, and
26 appeared to go to the content of my production—*e.g.*, the names of my cast and crew, a list of my
27 equipment, who provided my firearms, and why I needed to have ammunition as part of the
28 production. In November and December 2017, based on a sincere belief that those questions are

1 inappropriate and, as far as I have been able to determine, are not asked of any other film permit
2 applicant, I declined to answer these questions and urged the City to move forward.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct. Executed this 4th day of February, 2021 at Los Angeles, California.

5 *Michael Zeleny*

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7 Michael Zeleny
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PROOF OF SERVICE

I hereby certify that on February 4, 2021, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Gabrielle Bruckner
Gabrielle Bruckner